

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 542—CONTRACT ADMINISTRATION

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Subpart 542.2—Assignment of Contract Administration

542.200–70 Policy.

(a) Contracting directors shall establish procedures that will ensure that contract administration activities are

performed by qualified personnel and in an effective manner.

(b) Contract administration may be performed by the contracting officer who awarded the contract or by an administrative contracting officer (ACO) within the contracting office. As an alternative, management may establish a separate contract administration office (CAO) consistent with the nature and complexities of the contracts, the need to perform contract administration at or near the contractor's facility or the place of performance, and the availability of resources.

(c) The contracting officer may designate one or more representatives to perform specified functions such as quality assurance, production, price analysis, finance and various engineering and technical specialties. These representatives may not enter into or modify a contract or otherwise perform functions reserved for a contracting officer except to the limited extent permitted for construction contracts. (See 542.201.2(d).) Designations of ACOs and contracting officers representatives must be in writing and communicated to the contractor.

542.201 Definitions.

Assignment of contract administration means that process whereby identified functions, duties, or responsibilities related to the administration of contracts are assigned to a CAO or an ACO within a contracting office.

Contract administration means the performance of actions after contract award that the Government takes to obtain compliance with contract requirements, including timely delivery of supplies or services, acceptance, payment, and closing of the contract. These actions include technical, financial, audit, legal, administrative, and managerial services in support of the contracting officer. It may include additional tasks requested or needed by the contracting activity including support in the pre-award phase of contracting.

Contracting Officer's Representative (COR), *Contracting Officer's Technical*

Representative (COTR), or *Contract Administrator* means an individual designated and authorized in writing by the contracting officer to perform specific limited contract administration activities.

Procuring Contracting Officer (PCO) means, a contracting officer (see FAR Subpart 2.1). This regulation uses the term to differentiate between procuring and administrative responsibilities when contract administration authority has been delegated to an ACO within a contracting office or a CAO.

542.202 Assignment of contract administration.

(a) The contracting officer may delegate to an ACO functions not listed in FAR 42.302 and 542.302(b) provided that:

(1) The requirements of FAR 42.202(c) are met and,

(2) The Associate Administrator for Acquisition Policy approves the additional delegation. Requests for additional delegations must be submitted through the appropriate Central Office Service Commissioner or Assistant Administrator of the appropriate service or staff office to the Office of Acquisition Policy. If a service/office is providing contracting support for another service/office the request shall be sent to the Commissioner/Assistant Administrator of the contracting service/office. That official shall coordinate as necessary with the affected service/office.

(b) In addition to the requirements of FAR 42.202(d), the contracting officer shall provide or make available a complete copy of the contract file to the ACO.

Subpart 542.3—Contract Administration Office Functions

542.302 Contract Administration functions.

(a) Normal contract administration functions identified at FAR 42.302(a) are to be performed, to the extent they apply, either by the contracting office or an office specifically established to perform contract administration functions.

(b) The ACO or CAO shall perform the additional functions listed below only when and to the extent specifi-

cally authorized by the contracting officer.

(1) Negotiate and issue priced or unpriced orders under indefinite delivery type contracts and basic ordering agreements.

(2) Issue change orders to modify the method of shipment, the packing requirements, the place where supplies are to be delivered, or the specifications after coordinating with the PCO (only applies to ACO's in FSS).

(3) Accept/reject requests for acceptance of nonconforming supplies after coordinating with the PCO if other than a minor nonconformance is involved (only applies to ACO's in the Federal Supply Service (FSS)).

(4) Negotiate price adjustments and execute supplemental agreements resulting from acceptances in (b)(3) of this section.

(5) Issue cure or show cause notices under FAR 49.402–3(b) after coordinating with the PCO (only applies to ACO's in FSS).

(6) Terminate individual purchase/delivery orders after coordinating with the PCO.

(7) Terminate the contract for default after coordinating with the PCO (only applies to ACO's in FSS).

(8) Assess liquidated damages.

(c) Functions peculiar to specific programs may be delegated when approved by the Associate Administrator for Acquisition Policy. Requests to delegate contract administration functions not found in FAR 42.302 and 542.302(b) must be submitted to the Office of Acquisition Policy by the head of the affected Central Office service for approval.

[54 FR 26551, June 23, 1989, as amended at 58 FR 52445, Oct. 8, 1993]

Subpart 542.4—Correspondence and Visits

542.470 Implementation.

HCA's issuing implementing guidelines or procedures must obtain the concurrence of the Associate Administrator for Acquisition Policy.

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Subpart 542.7—Indirect Cost Rates

542.703 Policy.

The contracting directors may waive the certification requirement under FAR 42.703-2.

[60 FR 54957, Oct. 27, 1995]

Subpart 542.11—Production Surveillance and Reporting

542.1107 Contract clause.

The contracting officer shall insert the clause at 552.242-70, Status Report of Orders and Shipments, in solicitations and indefinite quantity and requirements contracts for stock or special order program items. The clause may also be used in indefinite delivery definite quantity contracts for stock or special order program items when close monitoring is necessary because numerous shipments are involved.

Subpart 542.12—Novation and Change-of-Name Agreements

542.1203 Processing agreements.

In determining whether it is in the Government's interest to recognize a successor in interest under FAR Subpart 42.12, the contracting officer shall consider, in addition to information provided by affected contracting and contract administration offices, information provided by the agency small business technical advisor where the contract was awarded to a small business under a small business set-aside and the third-party successor is a large business. Under the following conditions the contracting officer should refuse to recognize the successor and nonconcur in the transfer of the contract(s):

(a) There is adequate reason to believe that the transaction is intended to circumvent the requirements and objectives of the small business program; or

(b) The contract involved is a multiple award schedule (MAS) contract and other MAS small business contracts exist for the same special item number(s). If the MAS contract involves both set-aside and non-set-aside special item numbers, the contracting officer shall cancel that part of the

contract related to the set-aside items, and process the novation request for the non-set-aside items under FAR Subpart 42.12.

Subpart 542.70—Bankruptcy, Insolvency or Dissolution of a Business

542.7001 General.

Prompt action is vital when a contractor becomes insolvent or files under any of the laws relating to bankruptcy, insolvency, and dissolution of businesses (11 U.S.C. 101 et. seq.) to assure that the Government's rights are protected. Terminated and current contracts with the contractor must be considered in any action contemplated. Contracting officers may be advised of such difficulties by the quality assurance specialist (QAS), contracting officer's representatives (COR), the Office of Finance, the Office of Inspector General, or other means, e.g., newspaper items, Dun and Bradstreet, an industry association, other contractors, other Federal agencies, or financial institutions. The contracting officer shall verify the accuracy of the information received and follow the procedures in 542.7002.

542.7002 Procedures.

(a) When a contractor is experiencing financial difficulties the contracting officer shall:

(1) Determine whether the contractor is delivering supplies and/or performing the services within the timeframes specified in the contract and whether the contractor is making satisfactory progress toward future deliveries or performance. Obtain, if needed, the recommendations of the QAS or COR.

(2) If the contractor has failed without excuse to deliver or perform under the contract or has failed to make progress so as to endanger performance, consider terminating the contract for default.

(3) If contract termination is not considered necessary, continue to monitor contract(s) by requesting that the QAS or COR visit the contractor's plant or the work site more often than usual to ascertain that progress is being made.

(4) If a small business contractor is involved, notify the regional Small

Business Administration (SBA) office and the agency Small Business Technical Advisor.

(5) If the contract has a performance bond and/or payment bond, the bonding company should be notified if the circumstances of the particular case dictate such notification.

(b) When a contractor has filed for bankruptcy, the contracting officer shall:

(1) Notify the contracting director, assigned counsel, the Office of Finance and other interested parties.

(2) Determine whether the contractor is performing in accordance with the terms of the contract and/or is making satisfactory progress towards completion of the contract. If the contractor has failed without excuse to deliver or perform under the contract or failed to make progress so as to endanger performance, consider terminating the contract for default. Termination must not be effected without concurrence of assigned counsel, who will coordinate with the assigned Assistant United States Attorney.

(3) Determine the status of and provide for the protection and disposition of Government-owned property, if applicable.

(4) If special safeguards for Government property are needed, determine the names, addresses, and phone numbers of the local Government officials concerned in the bankruptcy proceedings, e.g., sheriff, marshal, or the Receiver or Trustee in bankruptcy, if assigned.

(5) Transmit immediately all relevant communications to assigned counsel; e.g., notice of bankruptcy, notice of meeting of creditors, plan of arrangement, status of such plan, claims bar date and address of the Bankruptcy Court where proceedings were filed. Assigned counsel shall immediately transmit a copy of the notice of bankruptcy to the appropriate office in the Office of General Counsel (i.e., LG, LP, or LR) or to the assigned Assistant United States Attorney.

(6) Prepare, in consultation with assigned counsel, the preliminary, contingent and, after reprocurement (if any), final proof of claim. Such proofs of claim will be forwarded by the assigned counsel to the appropriate office

in the Office of General Counsel (i.e., LG, LP, or LR) or to the assigned Assistant United States Attorney.

(7) Consult with assigned counsel regarding possible setoffs of Government claims from retained and unpaid contractor earnings.

(8) Advise the Inspector General whenever there is reason to believe that the contractor may have fraudulently transferred assets before filing for bankruptcy. Also advise the Inspector General in any case where the contracting officer is aware of an ongoing audit or investigation of the contractor.

(c) Upon receipt of information that a contractor intends to dissolve a business or to cease operations for whatever reason, e.g., because of retirement, fire sale of business (without public notice), etc., the contracting officer shall verify the accuracy of the information. If the information is accurate, the contracting officer shall request the QAS or COR to verify status of contract(s) and notify other directly interested parties. However, the QAS or COR should not be requested to make special contract administration visits unless all other efforts to obtain the necessary information have failed. If a claim against the contractor is either pending or outstanding, the contracting officer should notify assigned counsel and simultaneously obtain information that would aid in finalizing the amount of claim(s).

Subpart 542.71—Audit of Contractor's Record

542.7101 General.

The Assistant Inspector General—Auditing and the Field Audit Offices audit contractors' records when required by law, regulation, or sound business judgment. These audits include periodic or special request audits of contractors determined to be necessary because of such matters as the financial condition, integrity, and reliability of the contractor and prior audit experience, adequacy of the accounting system, and the amount of unaudited claims. So that the Government can benefit to the maximum extent from these audits, a coordinated and cooperative effort must be made by

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contracting officers, technical specialists, and finance and audit personnel.

542.7102 Purpose of audit.

Audits are conducted to advise and make recommendations to the contracting officer concerning:

(a) Propriety of amounts paid, or to be paid, by GSA to contractors when such amounts are based on a cost or time determination or on variable features related to the results of contractors' operations;

(b) Adequacy of measures taken by contractors regarding the use and safeguarding of Government assets under their custody or control;

(c) Compliance by contractors with contractual provisions such as progress payments, advance payments, guaranteed loans, cash return provisions, and price adjustments; and

(d) Reasonableness of contractor's termination settlement proposals.

542.7103 Types of contracts subject to audit.

(a) The following types of contracts, (excluding small purchases) include either the Audit-Negotiation clause prescribed in FAR 15.106-2 or the Examination of Records by GSA clause at 552.215-70 and are subject to audit.

(1) Cost-reimbursement type contracts;

(2) Contracts involving the use or disposition of Government-furnished property;

(3) Contracts that provide for advance payments, progress payments based on costs, or guaranteed loans;

(4) Contracts containing a price warranty or price reduction clause;

(5) Contracts or leases involving income to the Government when the income is based on operations that are under the control of the contractor or lessee;

(6) Fixed-price contracts or leases with economic price adjustment, with incentives and with price redetermination;

(7) Requirements and indefinite quantity (call-type) contracts;

(8) Time-and-material, labor-hour, and letter contracts; and

(9) Leases when the rental is subject to adjustment based on negotiated operating cost escalation.

(b) A copy of each contract or modification of the types described in paragraph (a) of this section must be furnished to the Assistant Inspector General for Auditing (JA), General Services Administration, Washington, DC 20405, or to the Field Audit Office, as appropriate, simultaneously with distribution of other copies of the contract.

542.7104 Additional internal controls.

As a supplement to the contractual right to audit contractor records in cost-reimbursement type, time and materials, labor-hour, requirements and indefinite quantity (call-type) contracts, the contracting officer (with the assistance of the Assistant Inspector General—Auditing or the Field Audit Office) shall establish internal controls or procedures prior to the performance of those contracts with respect to any flexible or variable features. For example, if a time and materials or labor-hour contract is performed (on a Government facility or elsewhere) subject to observation or overall supervision by Government personnel approval of time records may be provided for as incidental to the Government supervision. Any reasonable and reliable method or procedure may be established to account for such matters as the time spent on the job and materials or supplies received which will assist the contract auditor and the contracting officer to determine the correctness of the charges to the contract.

542.7105 Releasing or withholding of audit reports.

The Freedom of Information Act generally requires the disclosure of Government records subject to certain exceptions. It may be to the benefit or detriment of the Government to release contract audit reports or portions of them depending upon the circumstances. However, because of the complexity of the matter, contracting officers shall consult with both the Assistant Inspector General-Auditing and the Office of General Counsel, before releasing or withholding such information.